

HOUSE BILL 2895

By Faison

AN ACT to amend Chapter 104 of the Acts of 1903; as amended and rewritten by Chapter 76 of the Private Acts of 2005; and any other acts amendatory thereto, relative to the charter of the City of Newport.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 104 of the Acts of 1903, as amended and rewritten by Chapter 76 of the Private Acts of 2005, and any other acts amendatory thereto, is amended by deleting Section 13 and substituting the following:

Section 13. Fire Civil Service

(a) **There is hereby created a system of Civil Service for the City of Newport Fire Department.**

A Civil Service Board, hereafter referred to as "the Board" to consist of three (3) members is hereby created to administer the system of Fire Civil Service. One (1) member shall be appointed by the board of mayor and aldermen of the City of Newport, one (1) member of the Board, who is not a member of the Newport Fire Classified Service, shall be elected by the members of the Newport Fire Classified Service, and one (1) member shall be elected by the two (2) members of the Board already appointed.

Term Period

The three (3) members thus appointed to the Board shall serve as Board members for a period of three (3) years, or until their successors are appointed and qualified. On or before the expiration of the term of each Board member, the successor shall be selected in the same manner as the prior selection of the Board member whose term expires. This Section does not limit the number of terms a Board member may serve.

Board Member Eligibility and Compensation

The members of the Board shall receive for their services an amount to be determined by the board of mayor and aldermen of the City of Newport for each day's attendance upon sessions of the Board, to be paid out of the general fund of the City of Newport. The Board members so appointed shall be a citizen of the United States, a resident of the City of Newport, eligible to vote in City elections and not a member of the Newport Fire Service or any member of the board of mayor and aldermen of the City of Newport.

Removal of Board Member

Any member of the Board may be removed from office by the board of mayor and aldermen of the City of Newport for incompetency, dereliction of duty, malfeasance in office, or upon conviction of any crime involving moral turpitude. However, no member of the Board shall be removed until charges have been preferred in writing, due notice given, and a full public hearing held before the board of mayor and aldermen of the City of Newport. A member who is removed by the board of mayor and aldermen has ten (10) days to appeal the removal to the chancery court of Cocke County, Tennessee, which court shall thereupon proceed to hear and determine such appeal. On appeal, the hearing shall be confined to the determination of whether the order of removal made by the board of mayor and aldermen of the City of Newport was or was not made in good faith for proper cause, and no appeal to such court shall be taken except upon such grounds, and the decision of such court shall be final.

Minimum Board Members to Conduct Business

The members of the Board shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this section. Two (2) members of the Board shall be sufficient for the decision of the matters and the transactions of all business to be decided or transacted by the Board under and by virtue of the provisions of this section. Due notice of all

meetings shall be given so that all three (3) Board members may have an opportunity to be present. Other than to appoint the third member of the board in accordance with Section 13(a), the Board shall transact no business until and except all three (3) Board members shall have taken office and remain qualified to act.

(b) Those Subject to and Eligible for the Fire Civil Service

The provisions of this section shall apply to all fire fighters working on a full-time basis, including the chief and assistant chief of the department, in the Newport Fire Department in the City of Newport. Newly hired fire fighters shall be required to complete a six (6) month probationary period before being subject to the Fire Civil Service. All persons together shall be known as the Fire Classified Service. Those employees that are not fire- and EMS-trained shall be known as unclassified service and are not subject to the Fire Civil Service; for example, administrative assistants, clerks, data entry, janitors, and maintenance.

(c) Divisions of the Newport Fire Department

The board of mayor and aldermen shall adopt an organizational structure for the Newport Fire Department, by defining the rank structure as well as the number of positions of each rank within each division. The divisions shall be as follows:

- (1) Administration Division;
- (2) Emergency Operations Division; and
- (3) Code Enforcement and Fire Prevention Division.

(d) Appointments, Promotions and Discharges

Subject to the other standards set forth in this section, the following minimum standards and the evaluation process shall be set by the chief of the fire department and the Board: combination of mental ability, physical condition, experience, education, personality, specified training, work ethic, and seniority if

applicable, for each job classification in the department up to and including the position of chief of the fire department. Such standards when set shall remain in effect until altered by action of the Board. After the enunciation of such standards, and completing the evaluation process, a roster shall be kept by the Board of all full-time personnel in the classified service indicating what job classifications within the respective department such personnel are eligible to fill. A roster shall also be kept on all applicants to become members of the classified service with appropriate indication of what job classifications such applicants are eligible to fill.

After the enunciation of the standards, no vacancy shall be filled except by a qualifying person on the roster of persons passing the evaluation system and meeting the requisite standards to fill such vacancy. If any vacancy shall occur within any job classification of the Fire Classified Service, the vacancy shall be offered first to that member of the qualifying job classification passing the evaluation system and having the greatest combination of mental ability, physical condition, experience, pertinent education, personality, specified training and seniority, if applicable, in descending order. However, if a vacancy occurs in the office of chief of the fire department, the vacancy shall be filled by the board of mayor and aldermen of the City of Newport from among the qualified names on the roster without necessary regard to seniority. No person shall be reinstated in, or transferred, suspended, or discharged from any place, position, or employment in the classified service contrary to the provisions of this section.

(e) Function and Duties of the Fire Civil Service Board

The Board shall organize by electing one (1) of its members a chairman and shall hold regular monthly meetings as may be required for the proper discharge of its duties.

The Board shall appoint a secretary who shall keep its records, preserve all reports made to it, superintend, and keep a record of all examinations and perform such other duties as the Board may prescribe.

It shall be the duty of the Board:

(1) To make suitable rules and regulations not inconsistent with the provisions of this section. Such rules and regulations shall provide in detail the manner in which examinations may be held and appointments, promotions, transfers, demotions, reinstatements, suspensions and discharge shall be made, and may also provide for any other matters connected with the general subject of personnel administration. Such rules and regulations shall include methods used in determining the standard for each job classification in the Fire Classified Service. These rules and regulations shall include provisions so that seniority may not be lost by persons holding a position in the Fire Classified Service, if such person leaves the Fire Classified Service to enter the United States military pursuant to the laws of the United States and the State of Tennessee that govern military leave on the part of employees; provided, that such persons return to the Fire Classified Service within the time prescribed by such laws following their honorable discharge or release from such service. In such cases, the period of military service shall be included in the period of seniority of such persons to the extent required by law.

(2) To conduct investigations and report on all matters regarding the enforcement and effect of the provisions of this section and the rules and regulations prescribed hereunder. The Board shall also inspect all institutions and employment affected by the provisions of this section and ascertain whether this section and such rules and regulations are being

complied with. Such investigations shall be made by the Board on its own motion and may also be made on a petition of complaint stating that irregularities or abuse exist, or by setting forth the necessity for such investigation in writing. In the course of such investigation, the Board shall have the power to administer oaths, issue subpoenas, and require the production of books, papers, documents, and accounts pertaining to the investigation. The failure upon the part of any person to comply with such subpoena or demand shall be deemed in violation of this section. All hearings and investigations before the Board shall be governed by the provisions of this section and by the rules of practice and procedure to be adopted by the Board. The Board, or its designated hearing officer, shall not be bound by technical rules of evidence. No informality in any procedure in a hearing shall invalidate any order, decision, rule, or regulation made or approved by the Board; however no decision shall be binding unless concurred in by a majority of the Board members.

(3) To hear and determine appeals of complaints relative to the allocation of positions, the determination of job changes, the furnishing of rosters and the position of members of the Fire Classified Service, and of applicants on such roster, and any other such matters relating to the administration of this section that may be referred to the Board.

(4) To ensure that job classifications, the standard for filling such classifications and the roster of eligible appointees within each classification are kept continuously up to date.

(5) To make provisions that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, shall be the last individuals, including probationers, that have been appointed in the classified service. Rules and regulations shall provide that persons

who are laid off shall be reinstated before any new appointments shall be made.

(6) To keep the appointing authority notified of the person highest on each eligible list for appointment to each vacancy that may occur.

(7) To keep such records as may be necessary for the proper administration of this section.

(f) Those Eligible for the Fire Civil Service

The provisions of this section shall apply to all firefighters working on a full-time basis, including the chief of the department, in the Newport Fire Department in the City of Newport. Newly hired firefighters shall be required to complete a six (6) month probationary period before being subject to the Fire Civil Service. All persons together shall be known as the Fire Classified Service. Those employees that are not fire and EMS trained shall be known as unclassified service and are not subject to the Fire Civil Service, for example they are administrative assistants, clerks, data entry, janitors, and maintenance.

(g) Applicants

(1) Applicants for a Fire Civil Service position of any kind under the Fire Classified Service must be a citizen of the United States.

(2) Applicants must provide a copy of a high school diploma or General Equivalency Degree, provide a valid Tennessee driver license, be at least eighteen (18) years of age, and provide a copy of a birth certificate.

(3) Applicants shall be required to participate in an assessment process including, but not limited to, a written exam, interviews, and physical performance test, as well as any other assessment process deemed worthy by the Board. A hiring list shall then be assembled based on the assessment.

(4) Applicants for positions in the Fire Classified Service, in addition to such minimum standards as are stated by the Board, must be of ordinary good

health, of good moral character, and of temperate and industrious habits; these facts to be ascertained in such manner as the Board may deem advisable.

(5) In the event of a vacancy for the position of Fire Fighter, the board of mayor and aldermen or their designee shall be provided by the Fire Civil Service Board with the top name on the hiring list for consideration. In the event of two (2) vacancies, the board of mayor and aldermen or their designee shall be provided with the top two (2) names and so on.

(h) The Office of Employees in the Classified Service

The tenure of everyone holding office, place, position, or employment under the provisions of this section shall be for and only during good behavior. Any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges for any of the following reasons only:

(1) Dishonesty, intemperance, immoral conduct, insubordination, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of an employee to conduct themselves properly; or any willful violation of the provisions of this section or the rules and regulation to be adopted hereunder.

(2) Conviction of a felony, or a misdemeanor involving moral turpitude or a misdemeanor reflecting upon the ability to perform public service.

(i) Removal

No person in the Fire Civil Service who shall have been permanently appointed or inducted into Civil Service under the provisions of this section shall be removed, suspended, or discharged except for cause and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation shall be served upon the accused, and a duplicate

filed with the Board. The chief of the fire department may suspend a member of the department pending the confirmation of the suspension by the regular appointing power or their designee under this section which must be within ten (10) days. Any person so removed, suspended, or discharged may within twenty (20) days from the time of their removal, suspension, or discharge, file with the Board a written demand for an investigation, whereupon the Board shall conduct such investigation. The investigation shall be confined to the determination of whether such removal, suspension, or discharge was or was not made for political reasons and was or was not made in good faith for cause. After such investigation, the Board may affirm the removal, or if it shall find that the removal or suspension was made for political reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or from which such person was removed, suspended, or discharged, which reinstatement shall, if the Board so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, or discharge. The Board in its discretion in lieu of affirming or reversing the removal, suspension, or discharge, may modify the order by directing a suspension without pay of a given period and subsequent restoration of duty, grade, or pay; the findings of the Board shall be certified in writing to the appointing power and shall be forthwith enforced by such authority.

All investigations made by the Board pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel and presenting his defense. At any such hearing, testimony of all witnesses shall be taken in writing and a record made of all proceedings. From any order adverse to the accused,

the accused may appeal to the chancery court of Cocke County. Such appeal shall be taken by serving the Board, within ten (10) days after the entry of such order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the Board affecting or relating to such order be filed by the Board in such court. The Board shall within twenty (20) days after the filing of such notice, make, certify, and file such transcript with such court. The chancery court shall thereupon proceed to hear and determine such appeal. On appeal, the hearing shall be confined to the determination of whether the order of removal, discharge, or suspension made by the board was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground, or grounds, and the decision of the court shall be final.

(j) Duties of All Officers and Employees to Assist the Board

It shall be the duty of all officers and employees of the City of Newport to aid in all proper ways in carrying out the provisions of this section, and such rules and regulations as may, from time to time be prescribed by the Board thereunder and to afford the Board, its members and employees, all reasonable facilities and assistance in the inspection of all books, papers, documents, and accounts applying or in any way appertaining to any and all offices, places, positions, papers, documents, and accounts relevant to the duties of the Board, and to attend and testify whenever required so to do by the Board or any member thereof.

(k) Leave of Absence

Leave of absence without pay may be granted by the Board upon the recommendation of the Chief of the Fire Department, and the Board shall give notice of such leave to the board of mayor and aldermen. A leave of absence

may not be granted for any other employment opportunity, excluding military service.

(l) Board Member Examination Ethics

No Board member or any other person shall:

(1) Defeat or deceive any person in respect to such persons right of examination or registration according to the rules and regulations of this section.

(2) Falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to the provisions of this section or in so doing, make any false representation concerning the same or concerning the person examined.

(3) Furnish any person special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered, or certified.

(4) Persuade, permit, or assist any person to impersonate another person in connection with any examination, registration, or application, or otherwise persuade, permit, or assist any person in their application or request to be examined or registered. The failure on the part of the Board, or any member thereof, or on the part of the board of mayor and aldermen of the City of Newport, or any member thereof, to comply within the terms of this section, shall be considered a violation of this section.

(m) Facilities for Administration

The board of mayor and aldermen of the City of Newport shall provide the Board with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, and lighted and supplied with all office supplies and equipment necessary to carry on the business of the Board and shall either

provide directly or provide the funds for the payment of such necessary clerical, administrative, actuarial, or legal assistance as may be employed by the Board under the provisions of this section. Failure of the board of mayor and aldermen to make such provisions shall be considered a violation of the section.

(n) Authority to Appropriate Funds for Administration

The board of mayor and aldermen of the City of Newport shall have authority to appropriate from the general funds of the City a sum sufficient to carry out the purposes of this section and shall make such appropriation. Under the provisions of this section, it shall be the duty of the board of mayor and aldermen of the City of Newport to appoint and create the Board as provided in subsection (a) of this section within thirty (30) days following the effective date of this act. Failure of the board of mayor and aldermen or any of its members to do so shall be deemed a violation of this section.

(o) Organization of the Board

It shall be the duty of the Board appointed subject to the provisions of this section to organize immediately and to ensure that the provisions herein are carried into effect, and to make suitable rules and regulations to effect said purposes. Failure of the Board, or any individual member thereof, to do so shall be deemed a violation of this section.

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the City of Newport. Its approval or nonapproval shall be proclaimed by the mayor or city recorder of the City and certified to the secretary of state.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 2.